

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 73 and 74 of the)	
Commission's Rules to Establish Rules)	
for Digital Low Power Television,)	
Television Translator and Television)	MB Docket No. 03-185
Booster Stations and to Amend Rules)	
for Digital Class A Television Stations)	

REPLY COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("PCC"), by its attorneys, hereby files these Reply Comments in the above-captioned proceeding. A review of the comments filed in response to the Commission's *Low Power DTV NPRM* confirms PCC's suspicion that this proceeding is hopelessly premature.¹ As PCC showed in its initial comments, the Commission should not be devoting any of its scarce resources to the DTV conversion of Class A, LPTV, and translator stations until it has resolved the numerous pending issues that continue to slow the progress of the full-power DTV transition. These issues include:

- the accommodation of stations that have not yet been granted paired DTV channels;
- the need to process construction permit applications for stations that do have paired allotments;
- finding ways to clear analog broadcasters from the 700 MHz spectrum bands;
- international coordination for stations along the Canadian and Mexican border; and
- the Commission's failure to resolve unexpected interference that is being caused to full-power analog stations, including the ducting phenomenon that already has afflicted several stations.

The Comments of other parties show that this is only a partial list of the transitional DTV issues that could be sidetracked if the FCC decides to devote its attention to the low-power transition at this time.

¹ Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Notice of Proposed Rule Making*, MB Docket No. 03-185, FCC 03-198 (rel. Aug. 29, 2003) (the "*NPRM*").

For example, commenters have raised issues regarding (1) must-carry for low-power DTV stations – an issue that has remained pending for over five years for full power stations; (2) auctions for low-power spectrum – when the Commission has yet to complete its 700 MHz auctions; and (3) the opening of filing windows for low-power DTV stations – when the Commission has not yet decided how to allot channels to full-power stations with only a single analog channel. As important as low-power stations will one day be to the over-the-air DTV broadcasting system, the Commission simply cannot afford to devote its limited resources to the many complicated issues presented by this proceeding at this time. Instead the Commission should refocus its efforts on resolving the outstanding full-power DTV issues that continue to bedevil the DTV transition. **The Commission needs to get back to basics: the future of full-power DTV must be secured before the Commission turns its attention to transitioning LPTV, translator and Class A stations to digital; there will be time to address these issues when the DTV transition is in its final stages.**

I. THE COMMISSION SHOULD NOT ALLOCATE ADDITIONAL BROADCAST SPECTRUM TO LOW-POWER STATIONS UNTIL FULL-POWER STATIONS HAVE BEEN ACCOMODATED.

As described in its Comments, PCC has numerous stations that for one reason or another have been excluded from the DTV transition thus far. PCC has six stations that have not yet been awarded a paired DTV channel;² six stations with paired channels whose construction permits have not yet been granted;³ and three stations with unresolved Canadian coordination issues.⁴ None of these stations can complete their DTV build-out, meaning that they will be increasingly left behind as the transition progresses and viewers begin to identify and develop loyalty to stations operating in digital. The Commission's first priority at this point should be to ensure that all existing full-power television

² See PCC Comments at 3. These stations include KPXL(TV) Uvalde, Texas, KFPX(TV), Newton, Iowa, KGPX(TV), Spokane, Washington, KPXJ(TV), Minden, Louisiana, WSPX-TV, Syracuse, New York, and WEPX(TV), Greenville, North Carolina.

³ See *id.* at 4. These stations include WBPX-DT, Boston, Massachusetts, WPXD-DT, Ann Arbor, Michigan, WVPX-DT, Akron, Ohio, KPXC-DT, Denver, Colorado, WPXJ-DT, Batavia, New York, and WPXQ-DT, Block Island, Rhode Island.

⁴ See *id.* at 5. These stations include WPXD-DT, Ann Arbor, Michigan, WVPX-DT, Akron, Ohio, and WPXJ-DT, Batavia, New York.

broadcasters are operating on a level competitive playing field by using any available spectrum to ensure that they are granted a paired DTV channel. This means that the Commission must reject any proposals that would divert its attention from authorizing full-power DTV operations, including the allotment of new channels to Class A, low-power, and translator operations.

The Commission always has acknowledged that full-power stations will drive the DTV transition. If the Commission wants full-power stations to help drive the transition, it must give them a stake in the transition's success. That stake comes with a DTV channel and authority – with the accompanying obligation – to construct. The Commission should remove all impediments to all full-power stations' DTV conversion before addressing low-power, Class A and DTV translator operations.

II. THE COMMISSION SHOULD RESOLVE CURRENT SPECTRUM CONGESTION PROBLEMS BEFORE CREATING ANY NEW LOW-POWER CHANNEL ALLOTMENTS.

Any Commission decision to award paired digital channels to low-power and Class A stations would result in confusion and a great waste of the Commission's administrative resources just as the full-power DTV transition needs increased clarity and the Commission's full attention. By increasing spectrum congestion, new channels for low-power and Class A stations would delay the DTV transition, which already threatens to stretch beyond the 2006 target date. If the Commission, despite the obvious drawbacks, nonetheless decides to allot new channels, it must do so on a no-new interference basis.

A. The Creation of New Low-Power Channel Allotments Would Needlessly Complicate an Already Arduous Spectrum Repack Process.

Paxson agrees with those commenters that note the folly of creating new channel allotments on Channels 2-51 while the Commission and private parties still are designing the plan for repacking all broadcast stations into the core.⁵ From a practical standpoint, the creation of new low-power and Class A channel allotments would interfere with this complex planning that must be completed before the Commission can proceed with full-power channel election and the final stages of the DTV transition. Allotting second channels to low power and Class A stations now, so that they can be displaced

⁵ See, e.g., Comments of Cox Broadcasting, Inc. and the Liberty Corporation at 2-5.

immediately when repack plans are finalized makes no sense for repack planners, low-power broadcasters, or the public.

Worst of all, the Commission may find it very difficult to order such widespread displacement given that viewers may come to rely upon the services that low-power broadcasters would provide on those paired channels. Attempting to account for numerous new low-power and Class A allotments in the design of the repack plan will make a difficult job all but impossible. This problem is particularly acute with respect to Class A broadcasters because their additional channels presumably would be primary allotments with the same interference protections to which analog Class A allotments are entitled. Some commenters have suggested that this problem can be solved by granting Class A stations a second low-power channel that would not be entitled to enhanced interference protection.⁶ This solution may leave the Commission with the authority to evict Class A stations from their paired digital channels, but that still will be a difficult process and the Commission can be certain that Class A broadcasters that prefer their paired digital channels to their analog will fight hard to keep their paired channels, regardless of their secondary status.

B. The Commission Should Not Further Encumber the 700 MHz Band With New Low-Power and Class A allotments.

For similar reasons the Commission must avoid commenters' invitations to create new encumbrances on Channels 52-69 by allotting paired channels in the 700 MHz bands.⁷ Additional allotments in the 700 MHz bands will only further complicate and delay clearance of the 700 MHz bands. Clearing Channels 52-69 for new wireless and public safety services is one of the chief benefits of the DTV transition, and the clearing project already has been delayed far beyond Congress's original target date of September 2002. As PCC often has advocated, the Commission should get 700 MHz band-clearing back on track for an auction of the remaining 700 MHz spectrum in 2004. The best way

⁶ See CBA Comments at 6.

⁷ See, e.g., *id.* at 9.

to accomplish that certainly is not the further encumbrance of Channels 52-69 with numerous new parties that have a vested interest in delaying band-clearing for as long as possible.

C. The Commission Must Reject CBA's Proposal for a 2% Interference Standard.

Even if the Commission can find a way to stretch its resources to accommodate existing full-power broadcasters and allot new channels for low-power DTV operations, it must reject any proposal that would allow new Class A, low-power, or translator stations to cause any interference to full-power broadcasters. In particular, the Commission should not even consider adopting CBA's proposal for a "2% *de minimis*" interference standard for interference caused by new low-power DTV stations to existing full-power stations.⁸

Precisely none of the policy considerations that led the Commission to adopt the 2% *de minimis* standard in the full-power DTV context support adopting that standard for low-power stations.⁹ To the contrary, a 2% interference standard for low-power stations would undermine broadcasters' ability to reach their authorized service area at a time when the Commission needs to be developing incentives for all broadcasters to upgrade their low-power DTV operations to full-power. **Rather, if the Commission unwisely chooses to allot new low-power DTV channels, it should adopt a strict no new interference standard.**

III. THE COMMISSION MUST ADDRESS UNEXPECTED INTERFERENCE PROBLEMS BEFORE CONSIDERING NEW CHANNEL ALLOTMENTS FOR LOW-POWER STATIONS.

Another compelling reason to refrain from creating new DTV channel allotments for low-power and Class A stations is that the Commission's ability to predict DTV interference accurately is in serious doubt. Most DTV stations have not begun full-power broadcast operations, but already unexpected

⁸ See Comments of the Community Broadcasters Association at n.8. The Community Broadcasters Association is hereinafter referred to as "CBA."

⁹ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report And Order*, 13 FCC Rcd 7418 ¶¶ 78-86 (1998). The policies included a need to permit UHF stations to cause some interference to allow UHF stations to maximize their DTV service area. This rule was necessary to guarantee a level competitive playing field between UHF and VHF full-power television signals. There is no such competitive interest here because LPTV stations already are competitively handicapped due to their secondary status.

interference episodes have been reported and documented to the Commission. All broadcasters and the Commission are aware of the ducting phenomenon that takes place near large bodies of water in warm temperatures or in any areas with significant temperature differences. In addition, the Commission has received evidence of full-power DTV signals reaching far beyond the range that the FCC's models predict with attendant damage to existing analog operations.

For PCC, the problem of excessive DTV to analog interference is not an academic one. PCC's Sacramento affiliate's ability to serve its existing viewers has been severely compromised by interference from a DTV channel in a neighboring market. Other incidents have occurred in coastal Virginia and Michigan.¹⁰ The Commission thus far has taken no action to resolve these problems, let alone designed any solutions to the ducting problem that is causing it. There is no telling what other problems will arise as an increasing number of stations begin full-power DTV broadcasting. After five years of DTV broadcasting, it is now time for the Commission to revisit its DTV operation and interference standards to ensure that the current standards still will ensure a robust full-power over-the-air DTV broadcasting system in the post-transition world. Such reconsideration obviously must precede any additional channel allotments to LPTV, Class A, or translator stations.

IV. THE COMMISSION MUST REJECT PROPOSALS TO EXPAND THE RIGHTS OF LOW-POWER STATIONS.

Unsurprisingly, the Commission's proposal to allot paired channels to low-power stations has brought comments from low-power and Class A broadcasters clamoring for permanent digital channels and mandatory cable carriage for those stations. The Commission must know, however, that the only appropriate object of this proceeding is to advance the DTV transition, not to expand the level of protection afforded to low-power broadcasters.

¹⁰ Ken Kerschbaumer, *DTV Interference Issues Loom: As Stations Move to Full Power, Problems Among Stations Are Expected To Increase*, BROADCASTING & CABLE, June 24, 2002 at 30. At least one station in San Diego notes on its web site that its signal can be received in Orange, Ventura, and Los Angeles Counties due to ducting. See *KFMB TV - Digital Television Frequently Asked Questions*, available at: <http://www.kfmb.com/hdtv.php> (last visited December 27, 2003).

A. The Commission Should Not Consider Additional Must-Carry Rights for Digital LPTV or Class A Stations.

To be blunt, the Commission has no business considering proposals by low-power television operators that they be granted mandatory carriage rights when they convert their stations to DTV.¹¹ The Commission still has yet to resolve its 5-year-old proceeding addressing must-carry for full-power digital stations despite an unambiguous Congressional directive to do so. As PCC has argued, full digital multicast must-carry is necessary to the continuing health of over-the-air broadcasting and will spur the DTV transition by creating incentives for broadcasters to create new types of content for use on multicast channels. Must-carry for additional low-power DTV stations will not serve either of these goals and has no statutory basis at this time. Accordingly, there is absolutely no justification for ordering carriage of low-power or Class A stations that have converted to DTV when the Commission has not even granted cable carriage of full-power DTV broadcast signals.

B. The Commission Should Allow On-Channel Conversion, but Should not Create Incentives for That Conversion at This Time.

PCC has no objection to the Commission permitting low-power stations to transition to digital on their existing analog channels provided that they can show that they will not interfere with any existing full-power analog or digital stations and provided that they remain subject to displacement. But there is no reason to encourage low-power stations to pursue this course because in the short term most viewers that rely upon their service will not be able to receive their DTV signals. Moreover, some commenters have pointed out the precarious financial position of low-power and Class A stations. If that is the case, the Commission should not encourage those stations to invest in equipment that may become unusable if the stations are displaced and forced to find a new channel. Accordingly, although the Commission should permit on-channel DTV conversion for low-power stations, it should do nothing at this time to encourage that conversion.

¹¹ See Comments of Word of Life Ministries – KADO CA at 1-2.

C. The Commission Should Reject Proposals for “Permanent” Digital LPTV Channels.

One particular proposed incentive is that the Commission should reward converting low-power broadcasters by guaranteeing them quasi-Class A protection from displacement.¹² There is no basis for this proposal in any existing Commission policy and no justification for instituting such a policy now. The Commission wisely restricted Class A eligibility to those stations that satisfied the statutory criteria contained in the Community Broadcasters Protection Act.¹³ The Commission should not now allow low-power stations that failed to qualify for Class A status to gain permanent interference protection simply because they transition to DTV.

For the same reasons that the Commission must not authorize paired channels for low-power stations until the spectrum repack is complete, all existing low-power stations must remain subject to displacement. Any other course would seriously hamper the DTV transition because if low-power stations are given any type of interference protection from full-power stations, repacking full-power stations in the core spectrum will become exponentially – and needlessly – more complicated.

V. THE COMMISSION SHOULD DO NO MORE IN THIS PROCEEDING THAN ESTABLISH PROCESSING PRIORITIES AND SERVICE RULES FOR THE LOW-POWER TRANSITION TO DTV OPERATIONS.

A. The Commission Should Establish Simple, First-Come, First-Served Processing Priorities for Transitioning Class A, Low-Power, and Translator Stations.

PCC believes that on-channel DTV conversion for existing LPTV, Class A, and translator stations should be as simple as possible. In addition, where new channels are required to permit existing stations to continue to provide service, PCC believes that the allotment of such channels should take priority over the introduction of new low-power stations.

As PCC reads the Commission’s proposal, existing LPTV stations would be permitted to file minor change applications to convert to digital on their existing analog channel on a first-come, first

¹² See, e.g., CBA Comments at 7-8.

¹³ See Establishment of a Class A Television Service, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 8244, ¶¶ 17-18 (2001); see also 47 U.S.C. § 336(f)(1)(B).

served basis.¹⁴ Accordingly, PCC believes that Fox has misconstrued the Commission's proposal for "one-day filing windows" as applying to initial conversion applications rather than applications for new low-power stations which will be accepted in the future.¹⁵ To the extent that Fox is correct that the "one-day filing window" concept applies to initial DTV low-power and translator conversion applications, PCC opposes such a proposal because it is needlessly complex. The Commission's only real concern with these applications should be to ensure that they do not cause new interference to existing protected stations, so they should be fairly simple to process. There is no reason to institute a special "one day filing window" process to accommodate this simple process.

B. The Commission Should Authorize DTV Translators Only to Rebroadcast the Programming of Full-Power DTV Stations.

PCC also disagrees with several proposals made by Wyoming Public Television regarding DTV translator operations.¹⁶ In PCC's view, DTV translators should be permitted to do no more, but no less, than rebroadcast the entirety of the program stream of full-power DTV stations. Accordingly, translators should not be permitted to insert local content and they should not be permitted either to insert or delete ancillary or supplementary services. DTV translators also should not be permitted to downconvert the digital signals of the full power station. PCC recognizes that DTV translators eventually will play a very important role in allowing full-power DTV broadcasters to provide service to their entire communities, but to fulfill that role, they need not be permitted to insert local content or offer ancillary services not offered by their full-power parent station.

C. After Full-Power and Existing Low-Power stations have transitioned to DTV, the Commission Should Auction New Low-Power DTV Channels, But Should Process Requests for New Translator Channels on a First-Come, First-Served Basis.

Some parties appear to have been confused by the Commission's request for comment on the applicability of the auction rules and procedures to the licensing of new LPTV and translator stations.¹⁷

¹⁴ See *NPRM*, ¶ 92.

¹⁵ See Fox Comments at 4.

¹⁶ See Comments of Wyoming Public Television at 2-3.

¹⁷ See *NPRM*, ¶¶ 93-95.

The proper approach to this question lies with Congress's intent when it permitted the Commission to forbear from applying the auction rules to channels used by full-power broadcasters to transition to DTV.¹⁸ The plain import of this provision is to allow broadcasters to secure translator channels to bring full-service DTV to all the viewers in their service area. Because DTV translators eventually will play a large part in ensuring this result, Congress plainly intended that new translator stations would not be subject to auction proceedings. Instead, requests for new DTV translator stations should be handled on a first-come, first-served basis.

New low-power DTV stations, on the other hand, will not further the full-power DTV transition. Accordingly, requests for new low-power DTV stations do not qualify for the auction exemption under Section 309(j)(2)(B), and they should be subject to the full range of auction rules and procedures.

CONCLUSION

The Commission must reject all proposals in this proceeding that would further delay the full-power DTV transition by decreasing the flexibility of full-power broadcasters to develop their DTV spectrum. There are many contentious issues to resolve before the DTV transition's finish line will even come into view and the Commission should not add to the list by plunging into the low-power DTV transition before those questions are resolved. Accordingly, the Commission should adopt the approach advocated by PCC in this proceeding and prioritize resolution of outstanding issues regarding the full-power DTV transition before turning its attention to the clean-up issues raised in this proceeding.

Respectfully submitted,

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¹⁸ See 47 U.S.C. § 309(j)(2)(B).